

STEPTOE & JOHNSON LLP

ATTORNEYS AT LAW

1330 CONNECTICUT AVENUE, N.W.
WASHINGTON, D.C. 20036-1795

PHOENIX, ARIZONA
TWO RENAISSANCE SQUARE

TELEPHONE: (602) 257-5200
FACSIMILE: (602) 257-5299

ALFRED M. MAMLET
(202) 429-6205

(202) 429-3000
FACSIMILE: (202) 429-3902
TELEX: 89-2503

STEPTOE & JOHNSON INTERNATIONAL
AFFILIATE IN MOSCOW, RUSSIA

TELEPHONE: (011-7-501) 258-5250
FACSIMILE: (011-7-501) 258-5251

DOCKET FILE COPY ORIGINAL

March 17, 1997

VIA HAND DELIVERY

RECEIVED

MAR 17 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

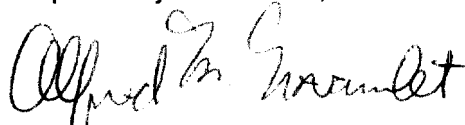
Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, DC 20054

**Re: In the Matter of Implementation of Section 402(b)(2)(A) of
the Telecommunications Act of 1996**

Dear Mr. Caton:

Enclosed please find for filing on behalf of Telefónica Larga Distancia de Puerto Rico, Inc. ("TLD"), an original and eleven copies of the Reply Comments of TLD prepared in connection with the above-referenced rulemaking. Also enclosed is an additional copy of the Reply Comments which we ask you to date stamp and return with our messenger.

Respectfully submitted,



Alfred M. Mamlet
Colleen A. Sechrest

Enclosures

No. of Copies rec'd
List A B C D E

0411

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

RECEIVED
MAR 17 1997
FEDERAL COMMUNICATIONS
COMMISSION
OFFICE OF SECRETARY

In the Matter of

CC Docket No. 97-11

**Implementation of Section 402(b)(2)(A) of
the Telecommunications Act of 1996**

REPLY COMMENTS OF TLD

I. INTRODUCTION AND SUMMARY

In these Reply Comments, Telefónica Larga Distancia de Puerto Rico, Inc. ("TLD") emphasizes that the Commission should define "extension" and "new" line in a manner consistent with both the plain meaning of Section 402(b)(2)(A), congressional intent, and past Commission precedent. The NPRM's proposed definitions are not consistent with any of these references. Moreover, they accomplish nothing but retain the very Section 214 authority that Section 402(b)(2)(A) was intended to eliminate. This is particularly true for international common carriers whose line extensions the NPRM irrationally excludes entirely from the ambit of Section 402(b)(2)(A).

A handful of commenters supported the NPRM's proposal to deny Section 402(b)(2)(A)'s exemption to international services.^{1/} These commenters argue that the

^{1/} Comments of Bell South at 8-9; Comments of Sprint at 3; Comments of U.S. West at 3.

policy distinctions cited by the NPRM, together with the Commission's actions in its Streamlining Order, are sufficient to support the NPRM's proposal. TLD strongly disagrees. As TLD demonstrated in its initial comments, Congress made the clear policy directive to exempt **all** line extensions from Section 214's requirements. This statutory command is not open to second guessing from the Commission or from commenters afraid to leave their markets fully open to competition. Moreover, the Commission's Streamlining Order simply is no substitute for a reasoned implementation of Section 402(b)(2)(A).

TLD joins the many other commenters who strongly urge the Commission to adopt a significantly broader interpretation of the term "extension," one that gives force to both the letter and the spirit of the 1996 Act. It can do this by defining "extension" as any augmentation connected to a carrier's existing facilities, without regard to geographic location. A "new" line would thus be any line which does not connect to -- and therefore does not add to -- a carrier's existing network. In addition, a company's initial entry would necessarily entail a "new" line, subject to Commission review.

II. THE COMMISSION SHOULD DEFINE "EXTENSION" AND "NEW" LINE CONSISTENT WITH THE LANGUAGE AND INTENT OF THE STATUTE

A. Neither The NPRM, Nor Any Commenter, Can Reconcile The NPRM's Proposed Definitions Of "Extension" And "New" Line With The Language And Intent Of The Statute Or Commission Precedent

Neither the NPRM, nor any commenter, can reconcile the NPRM's proposed definitions of "extension" and "new" line with the clear language and intent of the statute. Specifically, Section 402(b)(2)(A) provides that: "[t]he Commission shall

permit **any** common carrier to be exempt from the requirements of Section 214 of the Communications Act of 1934 for the extension of **any** line"2/

The language of this provision could not be more clear: **all** line extensions are exempt from Section 214's requirements. The NPRM's proposed definitions of "extension" and "new" line do not comply with this directive. In particular, the NPRM proposes to limit Section 402(b)(2)(A)'s exemption to domestic services. It does this by defining an "extension" as "a line that allows the carrier to expand its service **into geographic territory that it is eligible to serve, but that its network does not currently reach.**"^{3/} Thus Section 402(b)(2)(A)'s exemption applies only to those carriers the Commission deems "eligible." In other words, the NPRM proposes to define an "extension" as "the expansion of service into **domestic** territory." Correspondingly, the NPRM would define a "new" line as both "projects that increase the capabilities of a carrier's existing network within an area it already services,"^{4/} **and** "the expansion of service into international territory." However, nothing in the language of the statute even remotely supports the proposed distinction between international and domestic territory.

The NPRM's proposals also conflict with congressional intent. It does this in two respects. **First**, it contradicts Congress' clear intent, which the NPRM itself recognized, to "eliminate the Section 214 approval requirements for extension of lines."^{5/} MCI implies otherwise, arguing that Congress intended for the Commission to retain Section 214 requirements for "new" lines.^{6/} Yet, this argument provides no

^{2/} 1996 Act, § 402(b)(2)(A) (emphasis supplied).

^{3/} NPRM ¶ 21 (emphasis supplied).

^{4/} NPRM ¶ 21.

^{5/} NPRM ¶ 9.

^{6/} Comments of MCI at 6.

support for the claim that the Commission should define "extension" in so limited a fashion. Indeed, by defining the term so narrowly, the Commission divests it of practically all meaning.^{7/}

Second, as both TLD and GTE point out in their initial comments, Section 402(b)(2)(A), along with the rest of the 1996 Act, was designed to increase competition and decrease regulation.^{8/} The NPRM's proposals have the opposite effect, as they will clearly hamper the development of competition in the international services market. The NPRM and several commenters attempt to sidestep this clear congressional intent by arguing that policy reasons support the denial of the Section 402(b)(2)(A) exemption to carriers seeking to expand their international services.^{9/} Such concerns are completely inapposite. As TLD points out in its initial comments, it simply does not matter whether the Commission believes that there are policy reasons for maintaining restrictions on international line extensions: Congress has already made the decision to eliminate these restrictions.^{10/}

Additionally, as GTE points out, these policy concerns are unjustified. The market for international services is rapidly becoming competitive, and therefore the Commission "should not be concerned whether a carrier is overbuilding facilities since captive ratepayers would not be required to subsidize these actions."^{11/} Moreover, the recently concluded WTO telecommunications trade agreement should provide for a

^{7/} Comments of TLD at 4.

^{8/} Comments of TLD at 5; Comments of GTE at 6.

^{9/} NPRM ¶ 35; Comments of U.S. West at 3; Comments of Pacific Telesis at 3-4; Comments of Sprint at 2; Comments of Bell South at 8-9.

^{10/} Comments of TLD at 8.

^{11/} Comments of GTE at 6.

trade environment where market, not regulatory discipline, ensures against anti-competitive behavior both at home and abroad.^{12/}

Despite the market-opening thrust of the 1996 Act and the WTO Agreement, several commenters support the NPRM's proposal to exclude international services from Section 402(b)(2)(A)'s exemption by noting that the Commission has already liberalized the Section 214 requirements for international services in its Streamlining Order.^{13/} Yet the Commission did not intend the Streamlining Order to implement Section 402(b)(2)(A). It merely referenced the statute and noted its preliminary interpretation without elaboration or opportunity for comment.^{14/} This is hardly a substitute for a reasoned implementation of Section 402(b)(2)(A), particularly when the proposed position is inconsistent with Commission precedent.

And, as TLD demonstrated in its comments, the NPRM's proposed definition of "extension" is indeed inconsistent with Commission precedent.^{15/} Not a single commenter could distinguish several full Commission decisions and almost sixty International Bureau actions that treat all "extensions," domestic as well as international, uniformly.^{16/}

^{12/} Comments of USTA at 2.

^{13/} Comments of Sprint at 3; Comments of U.S. West at 3; Comments of Bell South at 8-9 (citing In the Matter of Streamlining the International Section 214 Authorization Process and Tariff Requirements, 11 FCC Rcd. 12884 (1996)).

^{14/} Streamlining Order, ¶ 10.

^{15/} See Comments of TLD at 6-10 (citing In the Matter of American Telephone & Telegraph Co., 29 F.C.C. 2d 229, 237 (1971); In the Matter of International Record Carriers, 76 F.C.C. 2d 115, 135 (1980); In the Matter of Western Union International, Inc., 76 F.C.C. 2d 167, 183 (1980); In the Matter of BT North America, Inc., 9 FCC Rcd. 6851 (1994)).

^{16/} Id.

B. The Commission Should Adopt Definitions Of "Extension" And "New" Line That Give Force To Both The Letter And The Spirit Of The 1996 Act.

TLD urges the Commission to adopt definitions of "extension" and "new" line that remain faithful to the language of the statute, its underlying intent and past precedent. This can be done by defining "extension" as "any addition of lines or capacity connected to a carrier's existing networks;" or, in other words, "any augmentation of a carrier's existing networks."^{17/} Correspondingly, the Commission should define "new" lines as "lines which are **not** connected to, and hence do not augment, a carrier's existing network." In other words, "new" lines would be those that would create a new network, including lines used by a company to enter the telecommunications services market. These definitions fully implement the language and intent of Section 402(b)(2)(A), consistent with Commission practice, because they exempt **all** line extensions from Section 214, without distinguishing between types of extensions or types of carriers. Only lines which are truly "new" would be subject to regulatory scrutiny.

These proposed definitions are not only consistent with the specific language of Section 402(b)(2)(A), but also with the pro-competitive spirit of the 1996 Act generally. By ensuring broad regulatory relief for carrier expansions, the Commission will foster competitive markets for both domestic and international telecommunications services.

^{17/} NPRM ¶ 35(ii) proposes the alternative definition of "extension" as "any augmentation in a carrier's network, heretofore subject to Section 214 certification, without distinguishing "new" lines from "extensions." TLD's proposal simply clarifies that such augmentations are connected to a carrier's existing networks.

III. CONCLUSION

For the foregoing reasons, TLD again urges the Commission to give full force to Congress' intent to exempt all line "extensions" indiscriminately, without regard to whether the carrier planning the extension is authorized for domestic or international service.

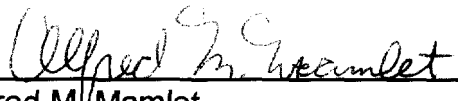
Date: March 17, 1997

Respectfully Submitted,

**TELEFÓNICA LARGA DISTANCIA
DE PUERTO RICO, INC.**

Of Counsel:

Encarnita Catalán-Marchán
María Pizarro-Figueroa
**TELEFÓNICA LARGA DISTANCIA
DE PUERTO RICO, INC.**
Metro Office Park
Building No. 8, Street No. 1
Guaynabo, Puerto Rico 00922



Alfred M. Mamlet
Pantelis Michalopoulos
Colleen A. Sechrest
STEPTOE & JOHNSON LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036-1795
(202) 429-3000

*Counsel for Telefónica Larga Distancia
de Puerto Rico, Inc.*

CERTIFICATE OF SERVICE

I, Colleen Sechrest, hereby certify that copies of the foregoing Reply
Comments were served by hand delivery (or by first class mail, postage prepaid (*)),
this 17th day of March, 1997, on the following persons:

Leon M. Kestenbaum
Marybeth M. Banks
Sprint Communications Company L.P.
1850 M Street, N.W.
Suite 1110
Washington, D.C. 20036

Lawrence Fenster
MCI Telecommunications Corp.
1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Lucille M. Mates*
Randall E. Cape
Pacific Telesis Group
140 New Montgomery Street, Room 1526
San Francisco, CA 94105

Margaret E. Garber
1275 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Diane Smith
ALLTEL Corporate Services, Inc.
655 15th Street, N.W., Suite 220
Washington, D.C. 20005-5701

William B. Barfield*
M. Robert Sutherland
BellSouth Corporation
Suite 1700
1155 Peachtree Street, N.E.
Atlanta, GA 30309-3610

Gail L. Polivy
GTE Service Corporation
1850 M Street, N.W.
Suite 1200
Washington, D.C. 20036

Mary McDermott
Linda Kent
Keith Townsend
Hance Haney
United States Telephone Association
1401 H Street, N.W.
Suite 600
Washington, D.C. 20005

Sam Cotten, Chairman*
Alaska Public Utilities Commission
1016 West Sixth Avenue, Suite 300
Anchorage, Alaska 99501

Mark C. Rosenblum*
Peter H. Jacoby
AT&T Corp.
295 North Maple Avenue
Room 3250J1
Basking Ridge, New Jersey 07920

Michael E. Glover
Bell Atlantic Network Services, Inc.
1710 H Street, N.W.
8th Floor
Washington, D.C. 20006

Mitchell F. Brecher
Robert E. Stup, Jr.
Fleischman & Walsh, L.L.P.
1400 Sixteenth Street, N.W.
Washington, D.C. 20554

John L. Traylor
Coleen M. Egan Helmreich
U S West, Inc.
Suite 700
1020 19th Street, N.W.
Washington, D.C. 20036

Michael J. Karson*
Ameritech Operating Companies
Room 4H88
2000 West Ameritech Center Drive
Hoffman Estates, IL 60196-1025

Robert M. Lynch*
Durward D. Dupre
Mary W. Marks
Marjorie M. Weisman
Southwestern Bell Telephone Company
One Bell Center, Room 3520
St. Louis, Missouri 63101


Carolyn C. Hill
ALLTEL Telephone Services Corporation
655 15th Street, N.W., Suite 220
Washington, D.C. 20005

Raul R. Rodriguez
Walter P. Jacob
AmericaTel Corporation
Leventhal, Senter & Lerman
2000 K Street, N.W., Suite 600
Washington, D.C. 20006

David Cosson
L. Marie Guillory
National Telephone Cooperative Association
2626 Pennsylvania Avenue, N.W.
Washington, D.C. 20037

Margaret M. Charles
Dalhi N. Myers
Swidler & Berlin, Chartered
3000 K Street, N.W., Suite 300
Washington, D.C. 20007

International Transcription Service
Room 246
1919 M Street, N.W.
Washington, D.C. 20554


Colleen Sechrest
Colleen Sechrest